

PROCEDURE

**ASSESSING SUPPLIER RESPONSIVENESS AND RESPONSIBILITY**

CAM 3.5.4

DATE: 12/22/99

**A. PURPOSE**

This procedure defines and describes the process of assessing supplier responsiveness and responsibility as it relates to evaluating solicitation responses during the source selection process. The concept of supplier responsiveness and responsibility also applies to other aspects of the acquisition process and can be referred to in the following sections within the California Acquisition Manual (CAM):

- CAM 3.3.4, Developing the Specification/Statement of Work
- CAM 3.3.5, Supplier Development and Capability Assessment
- CAM 3.4.2, Developing the Solicitation

**B. DEFINITIONS**

1. **Responsive Supplier** – A supplier whose solicitation response clearly indicates compliance without material deviation from the terms and conditions of the solicitation.
2. **Responsible Supplier** – Per the California Code of Regulations (C.C.R.), Section 1890(d): "...whether a particular bidder is a responsible bidder, within the requirements of Public Contract Code (PCC) Section 10301, involves an evaluation of the bidder's experience, facilities, reputation, financial resources, and other factors existing at the time of contract award." This definition applies to contracts for commodities (i.e., "goods", also known as material, supplies and equipment) and by policy is extended to information technology goods and services.

The following examples are provided to assist buyers in making their determination of responsibility within the context of an individual acquisition:

**a. Experience:**

- adequate experience in selling and providing post-purchase service to accounts similar to the State
- satisfactory history of performance
- adequate quality assurance program

**b. Facilities:**

- necessary production and technical equipment and facilities
- either possesses the necessary organization, experience, operational controls and technical skills, or has legally binding agreements to secure these resources
- capacity to comply with delivery schedule considering existing commitments

c. **Reputation:**

- satisfactory history of integrity
- qualified and eligible to receive an award under all applicable laws and regulations
- not currently in violation of clean air or water laws per Government Code (GC), Section 4477
- not currently listed by the California Department of Fair Employment and Housing as an ineligible contractor who has failed to provide a Nondiscrimination Program or California Identification Report per GC Section 12990
- not currently debarred or suspended from contracting activity

d. **Financial Resources:**

- adequate financial resources to perform the contract or the ability to obtain them
- adequate cost accounting system

e. **Other Factors:**

- the ability to satisfy special capability standards when required by a unique procurement

3. **Material Deviation** – A situation discovered in a bid where, in one or more respects, the bid is found not to be in substantial accord with one or more solicitation requirements, provides an advantage to one bidder over other bidders, or has a potentially significant effect on the delivery, quantity, quality, amount paid to the supplier, or on the cost to the State. See State Administrative Manual (SAM), Section 5212.
4. **Subject Matter Expert** – A person who has a recognized level of competency on a specific subject matter as a result of their education, work experience, and/or professional certification.

**C. PROCEDURE**

1. When planning a solicitation, buyers should consider adding any known, responsible suppliers that might not otherwise be on a bidders list. If the buyer needs assistance in determining additional responsible suppliers, see CAM 3.3.5, Supplier Development and Capability Assessment.
- a. For informal solicitations, the buyer may select the potential bidders who will receive opportunities to bid and not include any that are not deemed responsible. In doing so, the buyer should attempt to maximize competition among responsible suppliers to the greatest practical extent while also providing opportunities to small businesses and disabled veteran business enterprises (DVBES). See CAM 3.4.1, Competition vs. Sole Source for additional details. See CAM 3.4.2, Developing the Solicitation for the distinction between formal and informal bids. See also CAM 3.4.3, Small Business Participation and CAM 3.4.5, Use of Disabled Veteran Business Enterprises (DVBE).
- b. For formal solicitations, the buyer must send the solicitation to the Department of General Services (DGS) Procurement Division's (PD's) list of suppliers pre-qualified to bid pursuant to PCC Section 10301 and CCR Section 1890. The DGS PD is responsible for removing suppliers from the pre-qualified list if they repeatedly fail to

respond to State solicitations or have been determined to be non-responsible in accordance with established regulations and procedures.

2. It is the policy of the State that prior to making a source selection decision, the buyer must determine whether or not the proposed supplier is both responsive to all the requirements of the solicitation and also a responsible bidder. By assessing both bidder responsiveness and responsibility prior to an award, the buyer will be better assured that the resulting contractor will be able to successfully perform on the contract, thereby mitigating the risks to the State.
3. In competitive solicitations, buyers must first analyze whether each supplier in the competitive range is **responsive** to the solicitation without material deviation. This analysis of responsiveness covers all administrative and technical requirements and cost or pricing data submitted as required, as well as all contract terms and conditions or general provisions that may be attached to the solicitation. (Note: See CAM 3.5.5, Price/Cost Analysis for guidance on determining the competitive range.)
4. The buyer must then determine whether or not a supplier proposed for contract award is **responsible** by analyzing the facts that tend to indicate reliability, capability and the likelihood of successful contract performance. When the situation warrants, the buyer is encouraged to use subject matter experts, technical experts from the customer agency, or any other resource available in making the determination of responsibility or responsiveness. Responsibility can encompass a variety of factors, including but not limited to the following, as applicable to the specific solicitation: evaluation of the supplier's experience, facilities, reputation, financial resources and other factors existing at the time of contract award.
  - a. The buyer may use data from the DGS PD's Supplier Base Management system and all other available factual information based upon the buyer's experience, information available to the public or information provided in the response to a solicitation, to determine whether or not a bidder can be considered responsible for the solicitation being evaluated. See Appendix 1 for additional guidance on determining financial responsibility.
  - b. Even in single/sole source transactions, the supplier must be analyzed to determine that they are responsible. See CAM 3.4.1, Competition vs. Sole Source.
5. When an analysis of the risk factors indicates that a bidder should not be deemed responsive and/or responsible for award, the buyer shall document the basis for that recommendation and obtain any necessary management approval in advance of the rejection of a bid, or the announcement, if any, of intent to award. Procurement Division's System Integrity and Supplier Base Management Units should be notified.
6. A supplier deemed by the State to be non-responsive or non-responsible to a solicitation resulting in a formal, sealed bid, may be entitled to protest any award. See CAM 3.5.7, Protests of Proposed Awards and CAM 3.2.5, Buying Under the Alternative Protest Pilot Program (AB 1159). If the DGS PD recommends removal of a supplier from the list of pre-qualified bidders as a result of a determination of non-responsibility, the supplier may request an administrative hearing to determine whether the evaluation of non-responsibility was appropriate. In accordance with established practices, the DGS Office

of Legal Services will conduct such administrative hearings. Where the determination of non-responsibility is examined in the protest hearing, the supplier has no other administrative remedy.

7. When the analysis indicates that risk is present and the supplier selected for award may be non-responsible, but it is determined necessary to award the contract despite the risk, the buyer shall document in the contract file what actions will be taken to minimize or manage risks. An example of risk management provisions in the contract might be to negotiate with the selected supplier to add requirements to the contract for frequent progress reports or other data to be provided to the buyer that will assist in successful project management and contract administration.
  - a. Where this decision to proceed despite the risk is made by the buying function, it requires concurrence by the buyer's management and notification to the end user.
  - b. In some cases, the decision to proceed despite the risk may be made by the end user or program management. In this case, the requesting agency shall provide a memorandum to the DGS PD, signed by the Department director (or other highest authority) affirming that they know and accept the risk and wish to proceed notwithstanding the risk.
8. In the event that the buyer becomes aware that the supplier is experiencing difficulties in performing, the buyer must take aggressive action to either resolve the problem or consider terminating the contract. See CAM 3.7.6, Dispute Resolution and CAM 3.7.7, Contract Termination.

#### **D. RESPONSIBILITIES**

1. Buyers shall perform the analysis of supplier responsiveness and responsibility, evaluate risk of potential non-performance, and document the file with any findings relative to non-responsiveness and/or non-responsibility.
  - a. Buyers may request the assistance of subject matter expert(s) from within State government in the analysis of supplier responsiveness and responsibility.
  - b. Subject matter expert(s) from outside of State government may also assist the buyer, and such services may be obtained by subscription or contract (such as through firms that furnish business information or the use of consultants to evaluate suppliers). Buyers may also use information available to the general public to assess responsibility factors.
2. When a supplier does not meet the criteria for responsiveness and responsibility, management shall review and approve the buyer's analysis, as appropriate for the particular solicitation. Procurement Division's System Integrity and Supplier Base Management Units should be notified of this situation.
3. The State Board of Control or the Office of Administrative Hearings may resolve protests on issues of non-responsiveness or non-responsibility per CAM 3.4.8, Handling Protests of Solicitation Requirements and CAM 3.5.7, Protests of Proposed Awards and

CAM 3.2.5, Buying Under the Alternative Protest Pilot Program. The DGS Office of Legal Services will conduct any necessary administrative hearings.

## E. APPENDICES

[Appendix 1 – Guidelines for Financial Responsibility](#)

## F. AUTHORITY AND REFERENCES

1. Statutory: [PCC 10301](#)  
[GC 4477](#)  
[GC 12990](#)
2. Administrative: [CCR 1890\(d\)](#)  
[SAM 5212](#)
3. Procedural:  
[CAM 3.3.4, Developing the Specification/Statement of Work](#)  
[CAM 3.3.5, Supplier Development and Capability Assessment](#)  
CAM 3.4.1, Competition vs. Single/Sole Source  
CAM 3.4.2, Developing the Solicitation  
CAM 3.4.3, Small Business Participation  
CAM 3.4.5, Use of Disabled Veteran Business Enterprises (DVBE)  
[CAM 3.4.8, Handling Protests of Solicitation Requirements](#)  
CAM 3.5.5, Price/Cost Analysis  
CAM 3.5.7, Protests of Proposed Awards  
[CAM 3.7.6, Dispute Resolution](#)  
CAM 3.7.7, Contract Termination

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